

FOURTH APPELLATE DISTRICT
DIVISION ONE
June 1, 2004

D041665 Lavarias v. Toyota Motor Credit Corporation

D041995 Lavarias v. Toyota Motor Credit Corporation

The judgment is reversed and the superior court is directed to enter an order overruling TMCC's demurrer. The order awarding TMCC attorney fees is vacated. Appellants are entitled to their costs on appeal. O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D042260 Waste Management Inc., et al v. Superior Court of San Diego County/Guzman de Peralta et al

Let a writ of mandate issue directing the superior court to vacate its order overruling the demurrer and enter a new order sustaining the demurrer without leave to amend. The stay previously issued by this court on August 11, 2003, is vacated. Costs are awarded to the prevailing party in the writ proceeding. CERTIFIED FOR PUBLICATION. McConnell, P.J.; I Concur: McIntyre, J.
Dissenting opinion: Nares, J.

D041674 People v. Robersshaw

The enhancement imposed pursuant to section 23558 is reversed and the matter is remanded for resentencing. In all other respects, the judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D043632 Sun Lounge Tanning Centers v. Superior Court of San Diego County/Vanessa T.

Let a writ of mandate issue ordering the superior court to: (1) vacate its order denying Sun Lounge's motion for summary judgment, and (2) enter a new order granting Sun Lounge's motion for summary judgment. The stay issued by this court on January 28, 2004, is vacated. Sun Lounge is entitled to recover its costs in this writ proceedings. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D044403 Swadener v. Superior Court of San Diego County/People

The petition is denied.

D044404 Swadener v. Superior Court of San Diego County/People

The petition is denied.

D044370 Sumcad v. Superior Court of San Diego County/The Education Resources Institute, Inc., et al

The petition is denied.

D042404 Smith v. Superior Court of San Diego County/Seene

The petition for writ of mandate is denied. Real party in interest is entitled to costs in this writ proceeding. McDonald, J.; We Concur: Benke, Acting P.J., Haller, J.

D041968 People v. Magpiong

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

D043286 Peregrine Systems, Inc. v. Arthur Anderson Worldwide S.C.

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

FOURTH APPELLATE DISTRICT
DIVISION ONE
June 2, 2004

D043628 In re D.J. et al., Juveniles

The judgments are affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D042554 People v. Lane

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Aaron, J.

D042493 Potter v. Illinois Student Assistance Commision

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Irion, J.

D043813 In re A.A., a Juvenile

The judgment is modified by striking the true finding of grand theft (Pen Code, section 487, subd (c))(count three). As so modified, the judgment is affirmed. Benke, J.; We Concur: Haller, J., Aaron, J.

D040430 People v. Nissen

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D042084 People v. Foster

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Aaron, J., Irion, J.

D041966 In re the Marriage of Oropeza

The order is affirmed. Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D041946 People v. Dominguez

The petition for rehearing is denied. The request for publication of the opinion is denied.

D044402 Martin v. Superior Court of San Diego County/People

The petition is denied.

D044307 San Diego Unified Port District v. Superior Court of San Diego County/Schmidt

The petition is denied.

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FOURTH APPELLATE DISTRICT
DIVISION ONE
June 3, 2004

D044344 Chapman v. Superior Court of San Diego County/Trustees of the California State University

The petition is denied.

D041673 People v. Johnson

It is ordered that the opinion filed herein on May 4, 2004, be modified as follows:

1. On page 14, Immediately preceding the last sentence in the first paragraph at line 4, add the following sentence so that the final two sentences read: The court also rejected Johnson's claim of newly discovered evidence, finding Tolliver's declaration "without any credibility." The court also found that there was no prejudice as the evidence of guilt was "overwhelming."

2. On page 16, following the first paragraph which ends "Tolliver surely would have testified to them at trial," insert a new paragraph as follows: Indeed, the trial court rejected counsel's assertion that he could not discover Johnson's allegedly newly discovered defense during trial and found Tolliver's declaration in support of the new trial motion "without any credibility." We defer to the trial court's credibility determinations on motions for new trial brought on the grounds of newly discovered evidence. (People v. Beyea (1974) 38 Cal.App.3d 176, 202 [trial court could properly conclude that newly discovered statement was not credible and that it would not render a different result reasonably probable on a retrial].)

3. On page 16, delete the first sentence of the first full paragraph and insert the following sentence in its place: Further, even if the court erred in failing to grant a continuance (or deny Johnson's motion to substitute counsel), there was no prejudice.

There is no change in judgment.

Appellant's petition for rehearing is denied.

D041529 People v. Whitlow

It is ordered by the court on its own motion that the opinion filed herein on May 6, 2004, be modified as follows (see order). There is no change in the judgment.

D044230 Loranda Corporation v. Superior Court of San Diego County/Segal et al.

The petition is denied.

D043279 Howard v. Ramirez

Upon written request filed by appellant, the appeal is dismissed.

D044237 Lasheika T. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Lasheika T. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D044238 Jeffrey S. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Jeffrey S. T. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

FOURTH APPELLATE DISTRICT
DIVISION ONE
June 3, 2004(Continued)

**D044272 Dina M. v. Superior Court of the County of San Diego/San Diego County Health
and Human Services Agency**

The attorney for petitioner Dina M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

FOURTH APPELLATE DISTRICT
DIVISION ONE
June 4, 2004

D041297 People v. Scatolini

The judgment is affirmed. Aaron, J.; We Concur: O'Rourke, Acting P.J., Irion, J.

D043023 Citizens for Improved Sorrento Valley Access, Inc., et al. v. City of San Diego et al.

D043187 Citizens for Improved Sorrento Valley Access, Inc., et al. v. City of San Diego et al.

The petition for rehearing is denied. The request to publish the unpublished portion of the opinion is denied.

D041030 Parker, Milliken, Clark, O'Hara & Samuelian v. De La Fuente II et al.

The judgment and order reversed. Appellant to recover its costs of appeal. Benke, Acting P.J.; We Concur: Haller, J., McDonald, J.

D043298 In re Anneliese G., a Juvenile

The opinion filed May 11, 2004, is modified. There is no change in the judgment. The petition for rehearing is denied.

D041942 People v. Waddell

The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Irion, J.

D043441 People v. Marsh

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., O'Rourke, J.

D042669 Pinho v. Lobo

The superior court's order is reversed insofar as it denied Lobo's special motion to strike the defamation and interference with business relations causes of action; otherwise, the order is affirmed. The matter is remanded to the superior court with directions to enter a new order consistent herewith and for further proceedings. Lobo is awarded her costs on appeal. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

D044077 Kenneth M. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Kenneth M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D044166 Christina D. et al. v. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Christina D. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Christina D. is dismissed.

D040082 In re Marriage of Ward

The petition for writ of supersedeas and request for stay are denied.